IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. [illegible]

UNITED STATES OF AMERICA,
Petitioner,

vs.

THE SHOTWELL MANUFACTURING COMPANY, BYRON A. CAIN, FRANK J. HUEBNER, AND HAROLD E. SULLIVAN.

THE SHOTWELL MANUFACTURING COMPANY, BYRON A. CAIN, FRANK J. HUEBNER, AND HAROLD E. SULLIVAN,
Cross-Petitioners,

vs.

UNITED STATES OF AMERICA.

REPLY TO SUPPLEMENT TO MOTION TO REMAND

MOTION THAT CONDITIONAL CROSS-PETITION FOR CERTIORARI BE TREATED AS AN UNCONDITIONAL CROSS-PETITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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REPLY TO SUPPLEMENT TO MOTION TO REMAND

The "Supplement" to the Motion to Remand should be recognized and condemned for what it is—a disgraceful, police court attempt to avoid or obscure, by a barrage of accusations against our clients, the unanswerable propositions, adherence to which is essential in a proper system of criminal justice, that are set forth in our "Answer to Motion (Amended) to Remand."

THE SIGNIFICANT FACTUAL ASPECT OF THE "SUPPLEMENT" IS THAT IT ESTABLISHES THAT IN ANY EVENT THERE WAS A DISCLOSURE BY JULY 1948 WHICH WOULD HAVE BEEN TIMELY.

THE SIGNIFICANT LEGAL ASPECT OF THE "SUPPLEMENT" IS THAT IT CONCEDES THE CORRECTNESS OF OUR MAJOR PROPOSITION THAT IN NO EVENT CAN THE GOVERNMENT MOVE FOR A PARTIAL NEW TRIAL IN A CRIMINAL CASE IN AN ATTEMPT TO VALIDATE A CONVICTION ALREADY OBTAINED. It does this in the last half of its page 5 and on page 6 where the prosecutors deny that they are in any sense moving for a partial new trial as we have asserted. After conceding by indirection that they could not so do, they go on, in different words, to ask for precisely that but under a different label. They say they are asking that the district court make "a full investigation and *determination of the matters involved,*" and "*receive and appraise testimony and evidence bearing on the controverted questions of fact.*"

To "*receive and appraise*" "*evidence*" and to make a "*determination*" is so obviously to hold a trial, or, in the circumstances here, a partial, additional or supplemental trial in an effort to validate the original convictions, that it is effrontery to pretend otherwise.[1]

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1. *Carpenter* v. *Winn*, 122 U. S. 533, 538:

"Blackstone defines 'trial' to be the examination of the matters of fact in issue * * * But the word often has a broader significance, as referring to that final examination and decision of matter of law as well as fact for which every antecedent step is a preparation, which we commonly denominate 'the trial.'"

Black's Law Dictionary, 4th Edition:

"A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it."

88 *C. J. S.*, p. 19:

"As used in its legal sense with respect to judicial proceedings 'trial' is a familiar common-law term denoting a judicial examination of the issues in an action."

Aktiebolaget Svenska Handelsbanken v. *Chase National Bank*, 69 F. Supp. 833, 834:

By the vehemence and speciousness of their protest that they are not seeking a new trial, the prosecutors effectively concede that our system of law does not permit them so to do; their complex language as to "evidence," "controverted questions," "appraisals" and a "determination," cannot conceal, but quite clearly proves, that nevertheless that is exactly what they seek.

The force of this must not be overlooked—in our Answer (pp. 13-16) we argued that the prosecutors were seeking a wholly impermissible end—that the recorded judicial history of the country fails to show any such prior attempt. That argument alone is fatal to the Motion to Remand, regardless of by what affidavits it be supported. It would have been answered squarely if there were answer that could be made. Unable to answer it, or to cite authority, the prosecutors have resorted to the frivolous assertion that they want a *new "determination"* rather than a *"new trial."* One must look to Lewis Carroll rather than to law books to find the counterpart of such reasoning.

The Court is here dealing with the liberty of citizens of heretofore unblemished reputation (R. 2686-2705); it is dealing with fundamental rules of criminal procedure that have been recognized as necessary, wise and just throughout this Court's existence; it is dealing also with an attempt to have it rule that hereafter criminal cases

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"In a restricted sense a trial denotes that step in an action by which issues of fact are decided. In a broader sense, a trial is a judicial examination of the issues between the parties, whether they be issues of law or of fact."

People v. *Richetti*, 302 N. Y. 290, 97 N. E. 2d 908, 911;

"For centuries a 'trial' of a dispute of fact has meant 'the examination, before a competent tribunal, according to the laws of the land, of the facts put in issue, for the purpose of determining such issue.'"

In *People* v. *Looney*, 314 Ill. 150, 145 N. E. 365, 367, the Court held that the word "trial" includes all preliminary and subsequent proceedings after the return of the indictment.

may be tried piece-meal with the prosecutor traveling back and forth between appellate and trial courts until finally he either wears out the defendant or puts in, one way or another, enough evidence to satisfy the appellate tribunal. We cannot believe the Court ever will countenance so vicious a proposition.

If we are correct in what we have said thus far it follows that the Motion to Remand must be denied and it will be unnecessary for the Court to consider the balance of this Reply. Additionally, as we shall show, the Huebner testimony, which is alleged reason for the Supplement, was in the Government's possession considerably before the Motion to Remand was filed. Such of it as was believed material was reflected in the attorneys' hearsay affidavits attached thereto. All that the Huebner affidavit itself adds is disparaging material that conceivably might be relevant to some other indictment, or to the merits of this case, but is not material to the disclosure issues here—it does not in any way invalidate our previous Answer to the Motion.

However, the Supplement is so unusual a document and so trespasses on the rights of our clients, that we make further reply to it:

Assuming That the Government May Move for a New Trial on the Ground of Newly Discovered Evidence, the Supplement Is Insufficient.

The reason advanced for a further trial is that the prosecutors wish now to prove, through assertedly newly discovered evidence, that the disclosure was an "untimely" one—this is the ultimate factual and legal "determination" aimed at. But if everything in the Huebner affidavit be taken as true, it proves that a disclosure was made at least by July 1948. If it be considered as proving (which we shall show it does not), that a disclosure was not made in

January-March 1948, it nevertheless would show, for the legal reasons set forth in our Answer to the Motion to Remand (pp. 5-7, 19-24), *to which counsel attempt no reply*, a disclosure which, under definitive Treasury pronouncements and offers for disclosures, would have been timely. At the most, therefore, it is merely impeaching as to an immaterial point. Impeachment even as to a material point always has been ruled an insufficient ground for a new trial. (See *U. S.* v. *Johnson*, 142 F. 2d 588, 592, quoted at p. 17 Answer to Motion to Remand.)

But does the Supplement show contradiction of evidence as to when the disclosure was made? Despite its strident, generalized claims of "perjury" (quite in contrast with the modest claim of a "conceivably altered result" advanced in the Motion to Remand), does it make even a *prima facie* showing of perjury, or contradiction on a material point on the suppression hearing?

The Supplement asserts (p. 4) only that Huebner will testify on three points:

(1) That Lubben made over-ceiling payments from November 1944 to December 1946, rather than from September 1945 to June 1946 as defendants asserted. This goes solely to the merits of the case. This question was in no way involved in the suppression hearing. It has no bearing on the timeliness of the disclosure and therefore may be disregarded.

(2) That during the first six months of 1948 no one "mentioned" to Huebner (p. 8) that a disclosure had been made; that in July 1948 he was at the meeting with Shotwell staff people in the Belden-Stratford Hotel at which the recapitulations were prepared "so that a disclosure could be made;" that prior to this "so far as he knows" no work was done by anyone relative to compiling data "for the purpose of making a voluntary disclosure;" that

he was "given to understand" the date would be set at June 15, 1948. It is said (p. 4) that this contradicts suppression testimony by auditor Busby that Huebner was at a meeting in late January at which it was decided to make a disclosure, and by Cain that Huebner "possibly" was there.[2] And it does. But it does not contradict the testimony of Busby, Cain and Sauber that the disclosure in fact was made in the January-March period, that Sauber told them to assemble figures to assist the agents who would make an audit or investigation (R. 178, 182, 215, 232), that this work "dragged" and that finally Cain assembled the staff and got the job done (R. 232-3).

Neither Busby nor Cain in lengthy testimony as to the events leading up to the disclosure and as to the work done in assembling figures thereafter, mentioned Huebner as playing any part until the staff met to assist in putting together the final recapitulations, except that Busby gave a single answer (R. 176) that Huebner was present when Cain made the decision to disclose, while Cain at one point said Huebner "possibly" was (R. 228-9) and at another excluded him (R. 249). Out of many meetings between these people on many subjects in this period involving not merely taxes but a loan Lubben was requesting, any one of the three could be mistaken. Busby's and Cain's testimony as to who was present at this particular meeting was as to an immaterial point. The fact that Huebner's present alleged recollection differs from theirs is not unusual, is still a difference as to an immaterial point, and certainly does not show perjury by Busby or Cain or, for that matter, by Huebner. And Huebner's affidavit that "no one men-

2. It may be noted that at one point Cain said Huebner was "possibly" there (R. 228-9), at another he identified only himself and Sullivan as being at this particular session with Busby (R 249). This is indicative of the fact that the witnesses were endeavoring, within the limits of memory, to give honest testimony —it is indicative also of the unimportance or immateriality of this particular meeting to the issues that were being tried.

tioned to him" that a disclosure had been made plainly does not contradict evidence that one had been made. In neither law nor fact does the president of a corporation (Cain) always tell a plant manager (Huebner) everything he has done.

The affidavit discloses that someone has drilled into Huebner the notion that a disclosure could be made only by presenting a document containing corrected figures. Thus he says that the recapitulations were made "*so that*" a disclosure could be made. The fact that the disclosure *per se* consisted merely of coming forth and identifying one's self as having filed an improper return, that the Treasury always reserved the right to make its own investigation in verification of the disclosure, and that assistance by the tax payer in making a correct return was at most in the nature of a condition subsequent to the disclosure (Cf. Answer to Motion to Remand, pp. 28-29; see also footnote 2 thereof, p. 3), is one that has escaped Mr. Huebner and the prosecutors from whom he apparently is taking his advice. ("The simple statement that 'I have filed false tax returns and I want to make the Government whole,' would constitute a complete disclosure." Treasury release, May 14, 1947, R. 3136.)

(3) That sometime in the late summer or early fall of 1948 Cain and Busby told Huebner the case had been "fixed" for a tax deficiency of $20,000, but that someone destroyed the settlement papers. While this carries overtones of wrongdoing, it has nothing to do with the disclosure question because admittedly Agent Lima was assigned on July 30, 1948 (Dft. Ex. 15 at R. 3173, R. 321) to investigate or audit the company *pursuant to the disclosure* and had gone to work on the case.

Of the three items of proof, then, on which the Supplement claims the case should be reopened, items (1) and (3) obviously have no relevancy to the disclosure timeliness

issue that is pressed as the reason for reopening. Item (2), while connected with the disclosure events, is not material to the issue and could not support a motion for a new trial. New evidence that might warrant a new trial (assuming the Government could move for one), would have to be in direct contradiction of something originally given at the suppression hearing that was vital to a decision of the issue. Analysis demonstrates that the Supplement, despite its poisonous air, offers nothing that would warrant a new trial even if one were permissible.

By Failure to Support the Legal and Factual Theories of the Motion to Remand, i. e., That on June 21, 1948, Treasury Agents Got a "Scent", Which Would Make Any Disclosure Thereafter Untimely, the Supplement Is an Effective Demonstration That Those Theories Are Wrong.

The fact that the Supplement is a reply to our "Answer" to the Motion to Remand, cannot be disguised. It argues vigorously, albeit erroneously, against our argument that the Government cannot move for a partial new trial in order to validate a conviction already obtained; footnote 2 of the Supplement is a direct, although merely assertive, reply to our contention, supported by cases, (Answer, p. 10) that the result of the administrative proceedings against Sauber was exoneration from charges of official wrongdoing in connection with this case.

Since the Supplement is a reply to our Answer, it is of utmost significance that not a word is said to dispute the detailed demonstrations, based on the record and Treasury documents, at pages 4 to 7 and 19 to 25 of the Answer showing that the Intelligence Agents did not get a clue or "scent" as to tax violations by Shotwell on June 21, 1948, and that even if they had, a disclosure thereafter would have been timely. Huebner, for all the extraneous matter in his affidavit, only fortifies the fact that a disclosure *was*

made and that the disclosure brought about the investigation conducted by agent Lima.

Moreover, the report of Intelligence Agent Krane (R. 3166-3170), made in 1950 when events were fresh in people's minds and unconfused by the varying theories of successive sets of Government lawyers, shows conclusively that no independent investigation of Shotwell was even considered until long after Agent Lima had been assigned to the case as a result of the disclosure and had gone to work on it. Let it not be forgotten, as is shown by Record (pp. 3172, 3156) and Court of Appeals opinion, that the only reason this disclosure was not honored was not because of untimeliness but because the agents believed defendants could inform on persons who might be tax evaders and insisted, *as the price of immunity*, that they do so—"cooperate with their Government" (R. 3156) was the euphonious phrase they used. That noxious excrescence on the disclosure policy has spawned all this litigation. The policy invited the taxpayer to inform on himself alone, not on others.

Nor does the Supplement dispute our contention that counsel are now pressing upon this Court a point of disclosure law which was specifically disavowed in the trial court.

These are not minor points; they are as determinative of the issue as is our point that the Government cannot move for a partial new criminal trial; they would have been answered if counsel felt able so to do.

The Supplement and the Huebner Affidavit Were Not Diligently Presented.

It should be observed that neither the Supplement nor the Huebner affidavit makes any mention of *when* the Huebner evidence *first* came to the attention of the prosecutors. The documents are adroitly cast to leave an impression that all this is very recent and that the prosecutors have

moved with diligence. Thus, the Supplement opens with the unctuous, but unspecific assurance that "The rapidly unfolding developments in this case require the filing of this Supplement * * *," and the affidavit is dated December 19, 1956. However, the record rather than demonstrating "rapid unfolding" shows that *the Huebner evidence, whatever it may be, was in the possession of the prosecutors at least as early as August or September 1956*, in ample time to have been included in the original Motion to Remand filed here in October 1956. Huebner's affidavit admits that he testified before the April 1956 Term Grand Jury but refrains from admitting *when* he did so. However, the affidavit of McAuliffe, attached to our Motion for Leave to Withdraw as Counsel, establishes that Huebner was before that Grand Jury last August or September, and Huebner swears that when there (Supp. p. 10) he testified "to *these* and other facts."

It is apparent that the prosecutors, rather than being diligent or frank, have been playing cat and mouse with the defendants and with the Court. Ultimately, fearing that the Amended Motion to Remand might be denied, they decided to produce an affidavit from Huebner, although presumably they could have procured one at any time in the last five or six months. Certainly they could have procured an order from the District Court under Criminal Rule 6 making Huebner's testimony before the Grand Jury available.

The Character of the Supplement.

Up to this point we have examined everything in the Supplement and the affidavit that is asserted to be material to the suppression question which is before the Court. That examination leads to two plain conclusions:

(1) The Supplement and the affidavit are obviously in-

sufficient for the purpose for which they ostensibly are advanced.

(2) Both the Supplement and the affidavit contain many charges not material to the issue but of a type calculated to arouse animus against our clients.

If the prosecutors think they have a good case against our clients for these sundry offenses charged or inferred, they, of course, could procure indictments and endeavor to convict them. We of course think they should not do that; however the course is open to them. But it is grossly improper to attempt to reverse the present Court of Appeals judgment by innuendo of sundry misconduct.

When this case and its offshoots are viewed in perspective it will be seen that the Government's record is stained by repeated administrative excesses. Defendants have suffered from years of torture and improper Governmental action of which the Supplement is the mere culmination:

(a) The Treasury initially, and for years after the courts had ruled to the contrary, refused to recognize "black market" premiums on raw materials as a deduction from gross income (See Brief in Opposition to Certiorari, pp. 7-11). The whole controversy stems from this Treasury error of law. While no one can now recast events, we believe it is a certainty that had the Treasury ruled correctly as to what the tax law was at the time of the disclosure, or had it done so within the next few years, the whole course of events would have been greatly different and it is entirely probable that there would have been no indictment. Not until after indictment here did the Treasury bow to court rulings in this regard (See footnote 2, p. 7, Br. in Opp. to Certiorari).

(b) Three successive Secretaries of Treasury, (including one who became Chief Justice of the United States), and numerous lesser but highly placed and responsible

officials, publicly promised immunity to those who would voluntarily disclose. Now the same Government, the Government that talks about "good faith" by defendants, says that its promise is valueless and need not be kept. It now seeks a conviction despite its promise. The immoral position of the Government still is that even if the disclosure was letter perfect that the most a citizen can get is a suppression order; that he still may be convicted; that a Cabinet Member's promise to the contrary is of no more value than a Russian treaty. The fraud here is not by the defendants—it is by faithless public officials toying with the liberty of citizens.

(c) When the criminal case failed in the Court of Appeals, the Treasury resorted to a jeopardy assessment and levy so vicious, arbitrary and fantastic as to be set aside as a violation of due process (App. III, Answer to Motion to Remand). Had this maneuver succeeded however, it would have been a death sentence for the corporate defendant and seriously embarrassed the individuals in their means of defense.

(d) Then the Grand Jury was resorted to and soon the Court of Appeals had to enter its order that the prosecutors and Treasury agents again had violated Constitutional guaranties and must hereafter act lawfully (App. II, Answer to Motion to Remand). And in an attempt to avoid that decision, prosecutor Russo told such serious untruths to the Court of Appeals that the Department was impelled to lodge an apology (Footnote 4, pp. 10-11, Answer to Motion to Remand).

(e) The original Motion to Remand filed here was so cast as to leave the impression that Director Sauber was dismissed from Governmental service because of official misconduct in connection with this case. That had to be corrected by an Amended Motion to Remand.

(f) The Amended Motion to Remand is based in sub-

stantial part on the Russo affidavit, in which the key sentence, designed to support the new and erroneous theory that Government agents got a "scent" on June 21, 1948, is a square inversion of truth (See Answer to Motion to Remand, pp. 29-31).

(g) Each time it appears likely this Court may rule, some new artifice appears: at the time it might have been assumed a ruling would come down on the certiorari application, the Solicitor General's letter of December 6, 1955, was filed; when it was possible that the Court might rule before adjourning the 1955 term, the letter of June 1, 1956, was filed; when our Answer to the Amended Motion to Remand was filed (December 22, 1956) and it was likely that a ruling would be made on it, the Supplement and Huebner's affidavit were filed. Perjury was first charged, then abandoned (See Point II, Answer to Motion to Remand, pp. 16 ff), now is asserted again in the face of the significant fact that although a Grand Jury has been in session for months, no perjury indictment has come down.[3] The Huebner affidavit goes only to the Motion to Remand for a further trial as to suppression issues, yet it is loaded with vicious assertions material, if at all, only to the merits of the case for which a new trial already has been ordered.

(h) The concluding paragraph of the Huebner affidavit contains a sentence which should not pass unnoticed—"I was not asked to testify at either the trial or suppression hearing because I had stated I would not lie on the stand." Although the sentence is peculiarly phrased and is susceptible of many meanings, one possible innuendo is that the distinguished and wholly honorable and respected lawyers, members of the bar of this Court, who represented Huebner and the Company at the suppression hearing and the hearing on the merits (and are not on this appeal),

3. Although such an indictment would have no evidentiary standing here (*Brinegar* v. *U. S.*, 338 U. S. 160, 173), certainly the absence of one does not lend color to the prosecutors' claims.

were guilty of a serious offense. It is apparent from the entire record that there was no occasion to call on Huebner on the suppression hearing. As to the hearing on the merits this Court may be assured that counsel of the standing of those who handled the case below did not deprive Huebner of the privilege of testifying if he wished to do so.

We respectfully suggest this record of endless and unfair harassment is long enough—only the courts stand between citizens and administrative harassment that in and of itself is destructive of freedom.

Conclusion.

It is respectfully submitted that the Motion to Remand should be denied. It is further submitted that the Supplement, the sole avowed purpose of which is to present the Huebner affidavit, is such a departure from proper criminal procedures that it should be stricken.

Respectfully submitted,

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January 18, 1957.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 10.

THE SHOTWELL MANUFACTURING COMPANY, BYRON A. CAIN AND HAROLD E. SULLIVAN.
Cross-Petitioners,

vs.

UNITED STATES OF AMERICA.

MOTION THAT CONDITIONAL CROSS-PETITION FOR CERTIORARI BE TREATED AS AN UNCONDITIONAL CROSS-PETITION FOR CERTIORARI.

Now come The Shotwell Manufacturing Company, Byron A. Cain and Harold E. Sullivan by their attorneys, and respectfully move that the Conditional Cross-Petition for Certiorari heretofore filed on their behalf be treated as an unconditional Cross-Petition for Certiorari, and show:

1. When the Court of Appeals decision herein was made final in the late summer of 1955, this litigation was then some three and one-half years old and concerned, as to its merits, events that had occurred from eleven to nine years earlier. Cross-Petitioners either directly or through stock ownership in the Shotwell Company were involved in the series of civil cases referred to in *In the Matter of the April 1956 Term Grand Jury*, C. A. 7, November 13, 1956 (Appendix II, Answer to Motion to Remand), and were desirous of following that course of procedure which they were advised held most promise of enabling them to come

to some early general settlement of their tax problems. They were advised, and believed, that the effect of the suppression order entered by the Court of Appeals would probably be to prevent a re-trial of the criminal case; that while the Court of Appeals decision did not give them the immunity they had been promised, nevertheless it would probably prevent further practical prosecution; that upon such assumption, voluntarily to seek further litigation in this Court by an unconditional application for certiorari might well serve to prolong, rather than to hasten, a final conclusion.

2. The present apparent willingness of the defendant Huebner to testify hereafter as a Government witness raises the possibility that the Government may attempt upon re-trial of this case, to prove a *prima facie* case through Huebner (the very man whose affidavit shows there was a disclosure and that it was timely), even though the evidence produced by defendants in reliance upon the Government's promise of immunity be suppressed, *i. e.*, that the suppression order would be a fairly hollow victory. The Government now seems determined to press for a retrial some eleven-to thirteen years after the event. Such retrial would visit further harassment, crushing expense and emotional strain on citizens who already have been subjected to years of such treatment because the Government refused to honor its word. One of the obvious purposes of the Huebner affidavit is to convince the Court that defendants were guilty of tax evasion. But even if that should be assumed there is all the more reason to hold the Government to its solemn word not to prosecute, for the express purpose of the voluntary disclosure policy was to extend immunity to the presumptively guilty as well as to the innocent.

3. The Cross-Petition for Certiorari does not stand on the same footing as the Government's. The Government's

should be denied and Cross-Petitioners' granted for the following reasons:

The Government asks certiorari on a question of no present public importance if it ever was such. It asks merely that this Court review the case to determine a detail of an abandoned disclosure policy under a non-recurring fact situation. On the other hand, the Cross-Petition presents a fundamental moral and legal question that always will be of deep and abiding public importance, namely, can the highest officials of the Executive Branch of the Government, who are authorized by statute (as no ordinary prosecutor is), to compromise criminal cases (Section 3761 Internal Revenue Code of 1939, quoted p. 13 Conditional Cross-Petition), make promises of immunity within the ambit of such statute, obtain much evidence as a result thereof (and a willingness to pay taxes), and then have the promised immunity subsequently repudiated by a bureaucracy which is heartless enough to prosecute citizens who have been naive enough to trust their government?.

4. Presently this nation is engaged in a campaign to convince the outside world that its word is good. Is this Government's word to be good to others but valueless to its own citizens? This Court has been alert, and properly so, to protect citizens who have been induced or coerced into making alleged confessions by improper actions of minor law enforcement officials. Is it to be less alert in protecting citizens who have relied on the word of highest Government officials acting under statutory authority, and whose word is subsequently repudiated by conscienceless tax gatherers?

5. The practical effect and the necessity for enforcement of the promised immunity is abundantly shown by the facts in the trial court record, as supplemented by the record here. For years Cross-Petitioners have been beset and harassed despite the promise that they would not be.

The relentless procedures in this Court have been unusual. The record here shows that one of the Cross-Petitioners has recently suffered severe heart attacks; while it is too early to tell what Cain's ultimate condition will be, men of experience can well fear that the strain of another trial might kill him.

6. Cross-Petitioners believe that their Cross-Petition, for the reasons set forth herein and in the Cross-Petition, is meritorious, that granting of it and entry of an ultimate order by this Court upholding the motion below to dismiss on the grounds of immunity might now prove to be the shortest way of bringing this litigation completely to a close. Indeed we believe it would be a sound exercise of this Court's plenary and supervisory jurisdiction to direct, without further ado, dismissal of the entire proceeding, because a criminal trial in 1957 or 1958 concerning events of 1944-1946 could not be fair and would make a mockery of the constitutional right to a speedy trial.

Respectfully submitted,

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